आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद -- उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

फ़ोन नंबर./ PHONE No.: 079-27544557 फैक्स/ FAX : 079-27544463 E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वरा/By R.P.A.D DIN- 20220564WT000000EB54

फा.स./F.No. STC/15-93/OA/2020 आदेश की तारीख़/Date of Order :- 06.05-2022

जारी करने की तारीख़/Date of Issue :- 06.05-2022

द्वारा पारित/Passed by:- आर गुलजार बेगम *IR Gulzar Begum*
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 07/ADC/ GB /2022-23

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है ।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notices F.No.STC/15-93/OA/2020 dated 29.09.2020 issued to M/s Abhishek Associates, 24, Ambrish Society, Ranip, Ahmedabad.

BRIEF FACSTS OF THE CASE

M/s Abhishek Associates, 24, Ambrish Society, Ranip, Ahmedabad (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. ADZPD4239QST001.

2. On going through the third party CBDT data for the Financial Year 2014-2015 to 2016-17, it has been observed that the Assessee has declared less/ not declared any taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015 to 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/ Form 26AS, the details of difference as per CBDT data for the Financial Year 2014-2015 to 2016-17 are as under:

(Amount in Rs.)

F.Y.	Value As per B/S, P&L, Form 26AS of ITR	Value declared in ST-3 Returns	Differential amount	Service tax payable (including cess)
2014-15	67776951/-	45233790/-	22543161/-	2786335/-
2015-16	64766388/-	55248488/-	9517900/-	1380096/-
2016-17	90494720/-	81496344/-	8998376/-	1349756/-
TOTAL				5516187/-

3. The clarification along with documents were called for from the assessee for assessment purpose, vide letter F.No. STC/Prev/Gr-I/TPD-/2017-18 dated 12.02.2018 followed by Reminders dated 03.05.2018, 30.07.2019 and 13.07.2020. The assessee neither submitted the documents nor extended the co-operation in the matter although sufficient time was provided. This act of non-co-operation of assessee has contravened the provision of Section 72 of the Finance Act, 1994 has rendered themselves liable for penal action under Section 77 of Finance Act,1994.

4. In view of above, the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.5516187/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994.

5. It has been noticed that at no point of time, the assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015 to 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it appeared that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs.5516187/-. The above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same is to be recoverable from them under the provisions of Section 73 of the Finance Act, 1994 along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

6. Therefore Show Cause Notice was issued to M/s.Abhishek Associates called upon to show cause as to why :

(i) The demand for Service tax to the extent of Rs.5516187/- (Rupees Fifty Five Lakh Sixteen Thousand One Hundred Eighty Seven Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

(ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

(iv) Penalty of Rs.10,000/- (Rupees Ten thousand only) should not be imposed under Section 77 of the Finance Act,1994.

7. The provision of omitted Chapter V of the Finance Act, 1994 have been saved vide section 174 (2) of the CGST act, 2017 and therefore the provisions of the said chapter V of the finance Act, 1994 and the Rules made thereunder are applicable for the purpose of demand of Tax, Interest etc. and imposition of penalty under this notice.

DEFENCE REPLY

8. The said assessee submitted their reply to SCN on 14.10.2021 wherein they denied all the allegations and averments made vide the subject notice as if they all are individually and specifically dealt with. They also submitted that they are registered with service tax. They stated that earlier 2 SCNs have been issued by different adjudicating authorities covering the same period of 2014-15 to 2016-17 and this is third SCN in this regard. The assistant Commissioner of CGST, Audit Circle-VIII, Ahmedabad issued SCN vide F.No.CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 wherein the service tax of Rs.1946380/- for the period Oct.2015 to Jun2017 demanded. The second SCN was issued by Asstt.Commr., CGST & C.Ex., Div VII, Ahmedabad North vide F.No.Div-VIII/North/Dem 07/Abhishek Asso/18-19 dated 22.10.2018 wherein there is service tax demand of Rs.37,88,242/- for the period March 2016 to Jun 2017. They contended that when earlier 2 SCNs are already in adjudication, the issuance of another SCN covering the same period is not sustainable & justifiable at all and therefore requested to drop the proceedings.

9. They further contended that during the impugned period they have under taken the following projects.

i) Air Port Authority of India Bhopal Airport
ii) Sub contract received from M/s.M.V.Omni India Project Ltd
iii) ESI Mumbai – hospital
iv) ESI Ahmedabad –hospital

10. Regarding works contract income from air port authority of India Bhopal airport whereby noticee has claimed exemption from the service tax on the basis of Notification from Service tax – Mega Notification - No.12/2012-ST

14. Services by way of construction, erection, commissioning or installation of original 1 works pertaining to,-

(a) airport, port or railways;

(vii) after entry 14, with effect from the 1stMarch, 2016,the following entry shall be inserted, namely-

"14A. Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1stMarch, 2015and

on which appropriate stamp duty, where applicable, had been paid prior to such date :provided that Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1stMarch, 2015:provided further that nothing contained in this entry shall apply on or after the 1st April, 2020.

11. So it has been clear that any service provided to airport has been exempted from service tax w.e.f 01.03.2016 if agreement has been entered prior to 01.03.2015 then exemption will continue till 01.04.202. Further while auditing the audit party has not taken into account the fact of exemption into account, it has been undisputed fact that agreement has been executed prior to 01.03.2015, which has been renewed each year as a rate contract. So noticee has claimed exemption from the service tax under the said proviso, which has not been verified by the department before coming into conclusion of the taxability of the service, so demand of service tax without looking to the factual on required to be set aside. They relied upon the decision in the case of GMR Projects Vs.Commissioner o f Service Tax, Banglore 2021 (44) GSTL 95(Tri-Ban) in support of their claim. Accordingly they requested to drop the proceedings in this regard.

12. Regarding the sub contract receipt from M/s.MV Omni India Project Ltd for carrying out work for exempted project as per mega exemption Notification No.25/2012 vide clause 29(h) which is reproduces as under:

(h) "sub contractor providing services by way of works contract to another contractor providing works contract services which are exempt".
So, it has been specifically exempted from the service tax on the reason being that the service has been provided by the noticee to the principal during the impugned period has been exempt from service tax, accordingly service provided by them has also been exempt from service tax on the basis of mega Exemption notification. Department audit party has not verified the fact, it has been undisputed fact that work ultimate carried out by the principal has been exempt from the service tax, without denying the exemption of the principal denial of exemption in the hands of sub contractor has not been sustainable & enable.

13. Regarding eh works contract service pertains to ESI Mumbai and Ahmedabad are exempted as per, Sl.No.12(c) OF Notification No.25/2012 is exempted as the agreement is entered into prior to 01.03.2015. Hence it has been undisputed fact that service provided has been a clinical establishment owned by Govt, authorities and agreement has been entered prior to 0103.2015 so noticee has claim exemption from service tax rightly & eligible for the same. The assessee relied upon the case law of G,P,Ceramics P.Ltd V. Commissioner, Trade Tax U.P (2009) 2 SCC 90. They claimed that the department has computed demand of service tax on the basis IR only without taking into the factual details.

14. They have relied upon the following case laws in support of their arguments to support their contention that the department had not taken factual facts into account & had raised the demand of service tax which was unjustified and the same was fit to be quashed/dropped ;

- 2013(31)STR673 (Tri-Bang) REGIONAL MANAGER, TOBACCO BOARD Versus COMMR. OF C. EX., MYSORE
- 2010 (20) S.T.R. 789 (Tri. - Mumbai) ANVIL CAPITAL MANAGEMENT (P) LTD.Versus COMMR. OF S.T., MUMBAI
- 2010 (19) S.T.R. 242 (Tri. - Ahmd.)COMMISSIONER OF SERVICE TAX, AHMEDABAD Versus PURNI ADS. PVT. LTD.
- 2009 (16) S.T.R. 63 (Tri. - Chennai) SIFY TECHNOLOGIES LTD. Versus COMMISSIONER OF SERVICE TAX, CHENNAI

- 2013 (30) S.T.R. 62 (Tri. - Ahmd.) BHOGILAL CHHAGULAL & SONS Versus COMMISSIONER OF S.T., AHMEDABAD

15. The assessee have further submitted that SCN covers the period from 01.04.2015 to 31.03.2017 and SCN had been issued on 09.12.2020, that the SCN had invoked the extended period of limitation. The assessee have submitted that they were filing income tax returns and service tax returns regularly from time to time, they have submitted that the extended period of limitation cannot be invoked in the instant case since there was no suppression, wilful misstatement.

16. The assessee have further submitted that penalty cannot be imposed under Section 78 of the Finance Act,1994, as they had not suppressed any information from the department and there was no wilful misstatement on part of the assessee. They have submitted that it had to be established that there was a short payment of service tax by reason of fraud collusion, wilful misstatement, and suppression of facts or contravention of any provisions of the Act or rules made thereunder with intent to evade payment of service tax. The assessee have submitted that SCN merely alleged baldly that there was suppression on the part of the assessee. The SCN had not brought any evidence/facts which can establish that the assessee had suppressed anything from the department. They have submitted that instant case was not the case of fraud, suppression, wilful misstatement of facts, etc., hence, the penalty under Section 78 cannot be imposed on them. They have further submitted that they were entitled to entertain the belief that their activities were not taxable. They have relied upon the Hon'ble High Court of Gujarat decision in case of Steel Cast Ltd 2011(21)STR500(Guj).

17. The assessee have submitted that penalty under Section 77 was not imposable, as there was no short payment of service tax. They have submitted that they had always been and were still under the bonafide belief that they were not liable for payment of service tax. They have relied upon the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. Vs. The state of Orissa, the decision was followed by the Trinunal in the case of Kellner Pharmaceuticals Ltd., Vs. CCE. They have further submitted that the contraventions, if any, were not with the intention to wilfully evade payment of service tax. They have further relied upon the Hon'ble Supreme Court judgment in the case of Pushpam Pharmaceuticals Company V CCE. They have submitted that similar view had been taken by the Hon'ble Supreme Court in the case of CCE vs. Chemphar Durgs and Lininents. They have submitted that it is a settled principle of law that if a dispute is arising out of interpretation of the provisions of statute or exemption notification, no penalty could be imposed. They have relied upon the following case laws;

2002 (146) E.L.T. 118 (Tri. - Kolkata),,BHARAT WAGON & ENGG. CO. LTD. Versus COMMISSIONER OF C. EX., PATNA

2001 (135) E.L.T. 873 (Tri. - Kolkata) GOENKA WOOLLEN MILLS LTD. Versus COMMISSIONER OF C. EX., SHILLONG

2001 (129) E.L.T. 458 (Tri. – Del.) BHILWARA SPINNERS LTD. Versus COMMISSIONER OF CENTRAL EXCISE, JAIPUR

The assessee had requested to take a lenient view and drop the proceedings in the interest of justice.

PERSONAL HEARING:

18. Personal Hearing was granted to the assessee on 21.04.2022. Shri Vipul Khandar, Chartered Accountant, appeared for personal hearing on behalf the assessee. He has submitted that similar show cause notices have been issued and

hence the period of this SCN may be limited to uncovered period. They referred to the written reply of the noticee tendered and also provided copy of SCN F.No.CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 and SCN F.No.Div-VIII/North/Dem 07/Abhishek Asso/18-19 dated 22.10.2018 and their corresponding OIO No.CGST/A'Bad North/Div-VII/ST/DC/40/2021-22dt.24.08.2021 and No.CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022.

DISCUSSION AND FINDINGS

19. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

20. I have carefully gone through the Show Cause Notice, submission made by the noticee, Balance Sheet, and copies of invoices for the year 2014-15 to 2016-17. In the instant case, Show Cause Notice was issued to the assessee demanding Service Tax of Rs.55,16,187/- for the financial year 2014-15 to 2016-17 on the basis of data received from Income Tax authorities. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax of Rs.55,16,187/- for the financial year 2014-15 & 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

21. Further on perusal of documents on the record as well as the submissions made by the assessee, I find that the instant SCN issued for the period 2014-15, 2015-16 and 2016-17. The said SCN was issued to recover unpaid service tax of Rs.55,16,187/- on the differential amount between value as per Balance Sheet and Value declared in the ST3 Returns. It was also noticed that SCN F.No.Div-VIII/North/Dem 07/Abhishek Asso/18-19 dated 22.10.2018 was issued to the assessee demanding serving tax on the taxable value claimed as exempted vide Noti.No.20/2012 dated 20.06.2012 for the period March 2016 to June 2017, which was duly adjudicated vide OIO No. No.CGST/A'Bad North/Div-VII/ST/DC/40/2021-22 dt.24.08.2021.

22. Another SCN bearing No. CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 was also issued to the assessee after reconciliation of the income as per Balance Sheet during the period of Audit for the period from Oct 2015 to June 2017. Subsequently the same was adjudicated vide OIO No. CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022. As the said SCN bearing No. CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 was issued and adjudicated on the basis of reconciliation of income as per balance sheet for the period Oct 2015 to June 2017, I intend to adjudicate the remaining portion of the period covered in the instant SCN i.e. from April 2014 to Sept.2015 as two demand on the same amount for same year cannot be adjudicated as the same will become double duty demand. For the sake of clarity, I proceed to adjudicate the issue financial year wise.

FINANCIAL YEAR 2014-15

23. On perusal of instant Show Cause Notice, I find that during the year 2014-15, the total value as per B/S was Rs.6,77,76,951/- against which they have declared Rs.4,52,33,790/- in their STR as the value. Therefore service tax of Rs.27,86,335/- become payable on the differential amount of Rs.2,25,43,161/-(Rs.6,77,76,951/- - Rs.4,52,33,790/-). In the instant case, I have gone through the reply to SCN filed by the assessee wherein they claimed that during the impugned period they have provided Works Contracts Service (periodic maintenance, repairs and operation of electrical installations) to various airport under Air Port Authority of India and repair

and maintenance works for M/s.M.V.Omni India Project Ltd, ESI Mumbai and ESI Ahmedabad

24. Before discussing the taxability of the value of the said assessee, I would like to go through the legal provisions of the taxability of the services provided by the assessee during the period.

25. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as **"service"** means *any activity carried out by a person for another for consideration, and includes a declared service. Services covered under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 w.e.f. 1-7-2012), comprise of the following services viz.,*

(a)	*Service by the Government/Local Authority*
(b)	*Service by RBI*
(c)	*Service by Foreign Diplomatic Mission located in India*
(d)	*Service in relation to agriculture*
(e)	*Trading of goods*
(f)	*Manufacture of goods*
(g)	*Selling of space/time for advertisement*
(h)	*Services by access to road or bridge on a payment of Toll charges*
(i)	*Betting, gambling or lottery*
(j)	*Admission to Entertainment Events & Amusement Facilities*
(k)	*Transmission or distribution of electricity*
(l)	*Educational Services*
(m)	*Renting of Residential dwelling for use as residence*
(n)	*Financial services by way of extending deposits, loans or advances and inter se sale or purchase of foreign currency*
(o)	*Transportation of Passenger with or without accompanied belongings*
(p)	*Transportation of goods.*
(q)	*Mortuary/Funeral services*

26. In view of the above, I find that the activities carried out by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List the security service provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act. Therefore, I find that the said service provider is liable to pay Service Tax on income earned from provision of various taxable services provided for the period 2014-15 & 2015-16(Upto Sept.2015).

27. In the instant case the assessee was providing Works Contracts Service (periodic maintenance, repairs and operation of electrical installations) during the period under consideration. They had registered themselves for providing the said services. The said activity was carried out by the assessee on behalf of their clients/customers. There is a consideration received by the assessee from their customers for the above activity/services provided. Hence I find that the activity carried out by the said assessee falls within the meaning of service as defined under the provisions of Section 65B (44) of the Finance Act, 1994. In reply to SCN, they have stated that while doing the reconciliation of income with books of accounts, the department has not taken into factual details and without considering the factual details, the department has raised the demand which is not justifiable at all.

28. The assessee in their reply to SCN claimed that that during the impugned period they have provided Works Contracts Service (periodic maintenance, repairs and operation of electrical installations) to various airport under Air Port Authority of India

and repair and maintenance works for M/s.M.V.Omni India Project Ltd, ESI Mumbai and ESI Ahmedabad. They are claiming that the said services provided to various Air Ports are exempted as per entry No.14 of notification No.25/2012. Further they have also mentioned that the repair and maintenance works provided for M/s.M.V.Omni India Project Ltd, which is also exempted under Entry No.29(h) of Notification No.25/2012 dt.20.06.2012. However the assessee did not furnish any agreement/contract/sub contract/ledger/invoices/financial records or any documentary evidence in support of their claim that the services provided are exempted from service tax in the light of the above Notification.

29. Further, I find that the assessee have also claimed that they have provided works contract services to ESI Mumbai Hospital as well as ESI Ahmedabad hospital and claimed exemption under Entry Sl.No.12 (c) of Notification No.25/2012 dated 20.06.2012. However the assessee has failed to furnish any agreement/contract/sub contract/ledger/invoices/financial records or any documentary evidence in support of their claim that the services provided are exempted from service tax in the light of the above Notification.

30. In the absence of supporting documents, it is not possible to find out the taxability of any of the category of service. The assessee claimed benefit of exemption Notifications however they could not furnish any supporting documents and therefore the contention of the assessee that they are eligible for exemption from payment of service tax cannot be considered. In the absence of any of the documentary evidence, no claim of exemption from payment of service tax can be considered and therefore I find that the entire sale proceeds earned by the assessee as per their financial records as well as data provided by the Income Tax Department is to be considered as taxable income and the liability to pay service tax on which falls on the assessee. On scrutiny, I further observed and find that the assessee has not declared the service value of Rs. 2,25,43,161/- for the year 2014-15 in their ST-3 returns and therefore they are liable to pay Service Tax of Rs. 27,86,335/- on the services provided by them on the value as stated above as the same is not declared in their ST-3 returns. Therefore, service tax of Rs.27,86,335/- is required to be recovered from them under the provisions of Section 73 of the Finance Act, 1994 along with interest.

FINANCIAL YEAR 2015-16 (From April 2015- to Sept.2015)

31. On perusal of instant Show Cause Notice, I find that during the year 2015-16, the value as per B/S is Rs.6,47,66,388/- whereas they have declared Rs.5,52,48,488/- in the STR as the value. Therefore service tax of Rs.13,80,096/- become payable on the differential amount of Rs.95,17,900/-. However on perusal SCN No. CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 and corresponding OIO No. CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022, I find that the income as per Balance Sheet for the period October 2015 to March 2016 amounting to Rs.3,68,00,736/- and the same has already been considered and service tax has also been demanded and confirmed. Therefore I take the taxability of remaining amount of Rs.2,79,65,652/-(Rs.6,47,66,388/- - Rs.3,68,00,736/-) for the period April 2015 to Sept.2015. Accordingly the differential value for the period April 2015 to Sept. 2015 comes to Rs. 40,45,075/- (Rs.95,17,900/- - Rs.54,72,825/-).

32. The assessee in their reply to SCN, claimed that that during the impugned period they have provided Works Contracts Service (periodic maintenance, repairs and operation of electrical installations) to various airport under Air Port Authority of India and repair and maintenance works for M/s.M.V.Omni India Project Ltd, ESI Mumbai and ESI Ahmedabad. They are claiming that the said services are exempted vide notification No.25/2012. Regarding works contract income from air port authority of India Bhopal airport whereby noticee has claimed exemption from the service tax on the basis of Notification from Service tax – Mega Notification - No.12/2012-ST

14. Services by way of construction, erection, commissioning or installation of original l works pertaining to,-
(a) airport, port or railways;

(vii) after "entry 14, with effect from the 1stMarch, 2016,the following entry shall be inserted, namely-
"14A. Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1stMarch, 2015and on which appropriate stamp duty, where applicable, had been paid prior to such date :provided that Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1stMarch, 2015:provided further that nothing contained in this entry shall apply on or after the 1st April, 2020".

From the above, it has been clear that any services provided to airport has been exempted from service tax w.e.f 01.03.2016 if agreement has been entered prior to 01.03.2015 then exemption will continue till 01.04.202. Further while auditing the audit party has not taken exemption into account, it has been undisputed fact that agreement has been executed prior to 01.03.2015, which has been renewed each year as a rate contract. So noticee has claimed exemption from the service tax under the said proviso, which has not been verified by the department before coming into conclusion of the taxability of the service, so demand of service tax without looking to the factual on required to be set aside.

33. On this point, the assessee claiming that the said services provided to various Air Ports are exempted as per entry No.14 of notification No.25/2012. However the assessee could not furnish any evidence to prove that contract has been entered before 01.03.2015 along with the certificate from the Ministry of Shipping in the Govt.of India that the contract had been entered into before the 1st March 2015 as specified as per entry No.14 A of Noti No.12/2012. In the absence of documentary or other evidence regarding the fulfillment of the conditions specified under entry No.14 & 14A, the exemption claimed by the assessee cannot be accepted.

34. Further they have also contended that the repair and maintenance works provided for M/s.M.V.Omni India Project Ltd, which is also exempted under Entry No.29(h) of Notification No.25/2012 dt.20.06.2012. However the assessee did not furnish any agreement/contract/sub contract/ledger/invoices/financial records or any documentary evidence in support of their claim that the services provided are exempted from service tax in the light of the above Notification.

35. Further, I find that the assessee have also claimed that they have provided works contract services to ESI Mumbai Hospital as well as ESI Ahmedabad hospital and claimed exemption under Entry Sl.No.12 (c) of Notification No.25/2012 dated 20.06.2012. However the assessee has failed to furnish any agreement/contract/sub contract/ledger/invoices/financial records or any documentary evidence in support of their claim that the services provided are exempted from service tax in the light of the above Notification.

36. In the absence of supporting documents, it is not possible to find out the taxability of any of the category of service. The assessee claimed benefit of exemption Notifications however they could not furnish any supporting documents and therefore the contention of the assessee that they are eligible for exemption from payment of service tax cannot be considered. In the absence of any of the documentary evidence, no claim of exemption from payment of service tax can be considered and therefore I find that the entire sale proceeds earned by the assessee as per their financial records

as well as data provided by the Income Tax Department is to be considered as taxable income and the liability to pay service tax on which falls on the assessee.

37. On perusal of the Show Cause Notice and other documents available on record, I find that the assessee has not declared the differential value of Rs. 40,45,075/- (Rs.95,17,900/- - Rs.54,72,825/-) for the year 2015-16 (from April 2015 to Sept.2015) in their ST-3 returns and therefore they are liable to pay Service Tax of Rs. 5,86,536/- (Rs.13,80,096/- - Rs.7,93,560/-) on the value Services Provided by them on the value as stated above as the same is not declared in their ST-3 returns. Therefore the unpaid service tax of Rs.5,86,536/- is required to be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994. In view of the above facts, I find that out of the total service tax of Rs.13,80,096/-demanded on total differential value of Rs. 95,17,900/-, service tax of Rs.7,93,560/- on differential value of Rs.54,72,825/- is already covered in the OIO No. CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022, hence I find that the said service tax demand of Rs.7,93,560/- is required to be dropped as two demand on the same amount for same year cannot be confirmed as the same will become double duty demand.

FINANCIAL YEAR 2016-17

38. On perusal of the SCN No.CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 and corresponding OIO No. CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022, issued by DC, CGST, Division VII, Ahmedabad North, I find that the gross income as per balance sheet against Services provided is shown as Rs.9,04,94,720/- for the period 2016-17. Similarly on perusal of the instant SCN, I find that the total sales as per B/S is Rs. 9,04,94,720/- and accordingly service tax of Rs.13,49,756/- was demanded. On perusal of both the SCNs and OIO dt.11.02.2022, I find that the value taken as per B/S, P&L are same ie. Rs.9,04,94,720/-. However the differential value, on which service tax demanded, as per instant SCN is Rs.89,98,376/- and as per SCN No.CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 and corresponding OIO No. CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022 is Rs.67,32,243/-. In view of the above, I find that the entire differential value of Rs.89,98,376/- on which service tax of Rs.13,49,756/- demanded has not been covered by the SCN No.CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 and corresponding OIO No. CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022. Therefore, I find that service tax is required to be demanded and confirmed on the remaining differential value of Rs.22,66,133/- (Rs.89,98,376/- - Rs.67,32,243/-). Accordingly I find that service tax of Rs.3,39,920/- (Rs.13,49,756/- - Rs.10,09,836/-) on the differential value of Rs.22,66,133/- is required to be confirmed and recovered from the assessee.

39. In view of the above facts, I find that out of the total service tax of Rs. 13,49,756/- demanded on total differential value of Rs. 89,98,376/-, service tax of Rs.10,09,836/- on differential value of Rs.67,32,243/- is already covered in the OIO No. CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022, hence I find that the said service tax demand of Rs.10,09,836/- is required to be dropped as two demand on the same amount for same year cannot be confirmed as the same will become double duty demand.

40. An assessee registered with Service Tax Department is required to provide information/documents to the department as and when required. However, in this case the assessee failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax being the service tax provider. Even during the course of personnel hearing also the assessee failed to submit any documents proving that they are eligible for exemption from payment of service tax or abetment of value for the purpose of calculating service tax liability. In view of the

above facts, it is proved that the assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may have lead to proof that the service provider is liable to pays service tax.

41. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. M/s.Abhishek Associates deliberately not supplied their ST-3 Returns and other documents, the actual service provisions rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but only after going through the CBDT data these facts would have come to light. The said assessee himself admits in their reply to SCN that they were provided various services and not paid any service tax The said assessee in their submissions referred various case laws against invoking of extended period, however, in view of the above facts and discussion, it is correctly invoked the extended period while issuing SCN. Moreover, the Hon'ble apex court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations.

> *"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*
>
> *12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis -statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.*
>
> *13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.*
>
> *14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.*
>
> *To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.*

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder , the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :

"From sub-section 1 read with its proviso it is clear that in case the short payment, nonpayment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis -statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

In view of the above facts, the extended period is correctly invoked while issuing this Show Cause Notice

42. Further, they had not claimed any exemption for the said charges collected and provisions of the 'taxable services' during the aforesaid period in the ST-3 Returns, nor did they have sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent that the assessee had deliberately suppressed the facts of provision of the Taxable Service in the ST-3 Returns during the relevant period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax.

43. I further find that M/s.Abhishek Associates had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their various service receivers during the period from 01.04.2015 to 31.03.2017:

(i) Section 67 of the Finance Act, 1994 read with Rule 2A(ii)(B)(ii) of Service Tax (Determination of Value) Rules, 2006, in as much as they have failed to determine the net taxable value of taxable service and declared the same to the department.

(ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994 ; as amended, in as much as they did not pay the appropriate Service Tax on the taxable services provided by them.

(iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they, as a service provider, have failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax.

44. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Act, rendering themselves liable to penalty under Section 77 of the Finance Act, 1994, for failure to provide documents/details for

further verification in a manner as provided under Section 77 of the Service Tax Rules, 1994

45. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of fiancé Act, 1994 as they failed to pay the correct duty with the intend to evade the same. It is also a fact that they had deliberately not shown in their ST-3 Returns, the actual service provision rendered by them and service tax involved thereon, with intent to evade the proper payment of service tax on its due date, but on verification of data received from CBDT these facts would have not come to light. They have never informed the Service Tax department about the actual provision of taxable services so provided by them to their service recipients during the relevant time and they have also not shown the aforesaid actual provision of taxable service provided them, in respective ST-3 returns filed by them at the relevant period. The assessee have thus, willfully suppressed the actual provision of taxable service provided by them with an intent to evade the Service Tax. It, thus, found that the assessee, as a service provider, deliberately suppressed the actual provision of the taxable services provided by them, from the Jurisdictional Service Tax Authority and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act,1994.

46. Further, all the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part the service provider has been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the said service tax not paid/short paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years. All these acts of contravention of the provisions of Section 65, 67, 68 & 70 of the Finance Act, 1994, as amended from time to time read with Rules 6 and 7 of the erstwhile Service Tax Rules, 1994 liable to penal action under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time. For the sake of clarity, I reconcile the tax liability as under:

Period	Original demand	Confirmed portion	Dropped portion	Reason for dropping
2014-15	2786335	2786335	0	-
2015-16	1380096	586536	793560	OIO No. CGST/A"bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022
2016-17	1349756	339920	1009836	DO
TOTAL	5516187	3712791	1803396	

In view of the above discussion and findings, I pass the following orders:-

ORDER

I confirm the Service Tax demand amounting to Rs.37,12,791/- (Rupees Thirty Seven Lakhs Twelve Thousand Seven Hundred Ninety One only) for the period FY 2014-15 & 2015-16 (from Apr.2015 to Sept.2015) under Section 73(1) of chapter V of Finance Act, 1994 read with section 174 of CGST Act,2017 as amended and order

M/s.Abhishek Associates to pay up the amount immediately.

(ii) I drop the service tax demand amounting to Rs.18,03,396/-(Rupees Eighteen lakh Three Thousand Three Hundred Ninety Six only) pertains to the period Oct.2015 to March 2017 as discussed above

(ii) I order that interest be recovered from M/s.Abhishek Associates on the service tax amount of Rs.37,12,791/- under the provisions of Section 75 of chapter V of the Finance Act, 1994.

(iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s.Abhishek Associates under Section 77 of the Finance Act, 1994.

(iv) I impose a penalty of Rs.37,12,791/- (Rupees Thirty Seven Lakhs Twelve Thousand Seven Hundred Ninety One only) on M/s. Abhishek Associates under section 78 of the Finance Act 1994 as amended. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s. Abhishek Associates pays the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. Abhishek Associates shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North.

By Regd. Post AD./Hand Delivery
F.No.STC/15-93/OA/2020

Date:

To
M/s Abhishek Associates,
24, Ambrish Society, Ranip,
Ahmedabad

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-III, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File